

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 13019 of Larry Maloney, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 5101) to use the first floor of the subject premises as an automobile body repair shop in a C-1 District at the premises 5305-5307 East Capitol Street, S.E., (Square 5284, Lot 213).

HEARING DATE: August 15, 1979
DECISION DATE: September 5, 1979

FINDINGS OF FACT:

1. The subject property is located in a C-1 District on the southeast corner of the intersection of East Capitol and 53rd Streets, S.E.
2. The subject property is improved with a one-story brick building, which is one of a row of stores forming a small neighborhood shopping center on the south side of East Capitol Street between 53rd Street and 53rd Place, S.E.
3. The subject building is presently being used for body and fender repair work without a Certificate of Occupancy. The last previous legal use of the building was for "retail sales of auto parts and accessories removal of auto parts for sales No junk - No Storage" as authorized by Certificate of Occupancy No. B-100845, dated January 3, 1977. There is uncontroverted testimony in the record from the applicant that such a use had been in existence for sixteen or seventeen years. Such a use is permitted as a matter-of-right in the C-1 District.
4. The remaining buildings in the shopping center are also used for permitted C-1 uses, including a dry cleaners, beauty salon, grocery store, barber shop and doctor's office. All of the buildings share a common parking lot.
5. The applicant proposes to lease the premises to James Pressley, who would operate an automobile body and fender repair shop. The shop would be open from 7:30 a.m. to 6:00 p.m., Monday through Friday. Six to eight cars would be accommodated inside the building. There would be no exterior storage of automobiles related to the business. Mr. Pressley testified that he would employ at least three persons to work in the shop. Parking for employees would be provided at the side of the building.

6. The use proposed by the applicant is first permitted as a matter-of-right in the C-M District. The applicant thus requires a variance from the use provisions to establish the proposed use.

7. The applicant testified that he had sought a new tenant for the building when the previous tenant had given notice of its intention to leave. The applicant further testified that he had been approached by several potential tenants who could have used the property as a matter-of-right. The applicant rejected those offers because he felt the proposed tenants would not be beneficial to the area or to his own interests. The applicant further testified that he entered into a lease with the operator of the shop prior to the expiration of the previous lease. The lease with the operator is contingent upon approval from the BZA.

8. There is no physical condition inherent in the property that would prevent use of the property for some use permitted in the C-1 District.

9. The operator of the shop testified that the business would be conducted so as to prevent any external effects from the business from adversely affecting the area. The doors to the garage entrance would be kept closed, there would be no outdoor storage of cars and there would be an air filtering system to prevent paint and fumes from escaping.

10. An automobile repair garage including body and fender work is a use which is not permitted as a matter-of-right until the C-M light industrial district. As such, it is classified in the Zoning Regulations as similar to other more objectionable uses not permitted in residential or commercial districts. The Board finds that the proposed use is likely to cause adverse effects in the area in which it is located. The Board notes that residents of the area testified that paint fumes have already been detected in the area, based on the limited use the operator of the shop is presently making of the premises.

11. The Board finds that the proposed use is not appropriate for a C-1 neighborhood commercial district. Sub-section 5101.1 of the Zoning Regulations states "The C-1 District is designed to provide convenient retail and personal service establishments for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development." The Board finds that a body and fender shop is likely to draw its clientele from a large area of the city, and not primarily from a small neighborhood area.

12. The Office of Planning and Development, by report dated August 9, 1979 and by testimony at the hearing, recommended that the application be denied. The OPD reported that the proposed auto body repair shop is out of character with the other existing neighborhood commercial uses in the shopping center. The site is not situated so as to alleviate the noise, traffic and pollution commonly associated with body and fender work. The OPD concluded that the requested use variance if granted would cause substantial detriment to the public good and would substantially impair the intent, purpose and integrity of the Zoning Regulations and Maps. The Board concurs in the findings and conclusions of the OPD.

13. Advisory Neighborhood Commission 7E, by letter dated August 15, 1979, advised the Board that it had voted unanimously to oppose any variance in this application.

14. The Capitol View Property Owners Association, the Capitol View Civic Association and other residents of the area around the subject property opposed the application. The various persons in opposition were opposed because there is no need for an auto body shop in the area, because the proposed use would adversely affect the neighborhood because of the presence of wrecked cars, fumes and paint odors in and around the building, and because the site should be reserved for neighborhood oriented uses permitted in a C-1 District. There was also a number of petitions submitted to the record in opposition to the application.

15. The issue of the need for the shop is not related to the question of whether a variance can be granted. As to the views regarding adverse effects and retention of neighborhood serving commercial uses, the Board concurs with the persons in opposition.

CONCLUSIONS OF LAW AND OPINION:

The Board concludes that the requested variance is a use variance the granting of which requires the showing of an undue hardship upon the owner arising out of some exceptional or unique condition of the property. The Board concludes that the applicant has demonstrated nothing unusual about the site, and has presented no evidence that strict application of the Regulations would constitute a hardship upon the owner. The Board concludes that the property reasonably can be used for a purpose permitted in the C-1 District. Witnesses for the applicant so testified. The Board concludes that the operation of the proposed use is likely to have an adverse effect on the area in which it is located. The Board notes the position of ANC 7E and concludes that it has accorded to the ANC the "great weight" to which it is entitled. The Board therefore concludes that to

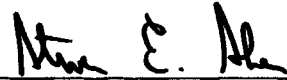
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permit use of the premises as an automobile body repair shop would be contrary to the intent and purposes of the Zoning Regulations and would be of substantial detriment to the public good. It is therefore ORDERED that the application is DENIED.

VOTE: 5-0 (Charles R. Norris, Ruby B. McZier, Leonard L. McCants, William F. McIntosh and Chloethiel Woodard Smith to deny)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER: 5 NOV 1979

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."